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 AG and Wells Fargo Bank, N.A., as Trustee

10 **UNITED STATES DISTRICT COURT**  
 11 **CENTRAL DISTRICT OF CALIFORNIA**

12 In re

13 CITY OF SAN BERNARDINO,  
14 CALIFORNIA,

Debtor.

15 CITY OF SAN BERNARDINO,  
16 CALIFORNIA,

Plaintiff-Appellee,

17 v.

18 STATE OF CALIFORNIA; JOHN CHIANG, in  
 19 his official capacity as State Controller of the  
 State of California; OFFICE OF STATE  
 20 CONTROLLER, STATE OF CALIFORNIA;  
 ANA J. MATOSANTOS, in her official  
 21 capacity as the Director of the State of  
 California Department of Finance;  
 22 CALIFORNIA DEPARTMENT OF FINANCE;  
 LARRY WALKER, in his official capacity as  
 23 the Auditor Controller, Treasurer, and Tax  
 Collector of the County of San Bernardino;  
 24 COUNTY OF SAN BERNARDINO;  
 CYNTHIA BRIDGES, in her official capacity  
 25 as the Executive Director of the CALIFORNIA  
 STATE BOARD OF EQUALIZATION;  
 26 CALIFORNIA STATE BOARD OF  
 EQUALIZATION,

27 Defendants-Appellants.  
28

Case No.: 5:13-cv-01797-SJO

**POB CREDITORS' MOTION  
 FOR LEAVE TO FILE  
 BRIEF *AMICI CURIAE* IN  
 SUPPORT OF APPELLEE  
 CITY OF SAN  
 BERNARDINO**

Assigned to  
 Hon. S. James Otero

1           Ambac Assurance Corporation (“Ambac”), Erste Europäische Pfandbrief-  
 2           und Kommunalkreditbank AG (“EPPK”), and Wells Fargo, NA, Trustee (“Wells  
 3           Fargo”) (collectively the “POB Creditors”) move this Court for leave to file a brief  
 4           *amici curiae*. The proposed brief is attached as **Exhibit A**.

5           The POB Creditors seek leave to file a brief *amici curiae* because the  
 6           outcome of this appeal will have a material effect on their interests in San  
 7           Bernardino’s main bankruptcy case, and may also have a significant effect on their  
 8           interests in other chapter 9 cases.<sup>1</sup> Ambac insures billions of dollars in municipal  
 9           obligations nationwide; EPPK owns bonds issued by municipalities across the  
 10          country, and Wells Fargo regularly serves as the indenture trustee for municipal  
 11          bonds. The POB Creditors therefore have a significant interest in the proper  
 12          resolution of the issues raised by this appeal because they may materially affect  
 13          events not only in San Bernardino’s bankruptcy, but also in other current and future  
 14          municipal bankruptcies nationwide.

15          The instant appeal concerns the extent to which the automatic stay prohibits  
 16          the Appellants from exercising certain state statutory remedies that directly affect  
 17          the debtor and its efforts to negotiate a plan of adjustment with all of its creditors.  
 18          The appeal implicates two important constitutional issues arising under the Tenth  
 19          and Eleventh Amendments, including the interplay between, on the one hand, the  
 20          Bankruptcy Court’s jurisdiction and the remedies provided by the Bankruptcy  
 21          Code, and on the other hand, state sovereignty under the Eleventh Amendment and  
 22          federalism concerns under the Tenth Amendment. The Appellants maintain that  
 23          they are essentially “super-creditors,” entitled to withhold approximately \$15

24          <sup>1</sup> Wells Fargo, EPPK, and Ambac are, respectively, the indenture trustee,  
 25          bondholder, and bond insurer of certain 2005 Pension Obligation Bonds issued by  
 26          the City. Ambac, as the bond insurer, is responsible to bondholders for certain  
 27          principal and interest payments when due as required by its policy to the extent the  
 28          City does not satisfy its obligations under the insured bonds. Under relevant  
 provisions of the applicable bond documents, insurance policy, and applicable law,  
 to the extent Ambac makes payments under its policy, it is subrogated to the rights  
 of bondholders and effectively steps into the shoes of such bondholders. Ambac  
 has already made at least one payment to EPPK as a result of the City’s failure to  
 make bond debt service payments.

1 million in tax revenues owed to the City. The City contends that if the Appellants  
 2 are permitted to withhold these funds, the City's ability to continue operations, and  
 3 to work out a plan of adjustment, will be seriously jeopardized.

4 The court has broad discretion to permit *amici* to appear; *amici* must  
 5 demonstrate only "that [their] participation is useful to or otherwise desirable to the  
 6 court." *Congregation Etz Chaim v. City of Los Angeles*, No. 97-5042, 2009 WL  
 7 1293257, \*5 n.4 (C.D. Cal. May 5, 2009) (internal quotation marks omitted).  
 8 "District courts frequently welcome amicus briefs from non-parties concerning  
 9 legal issues that have potential ramifications beyond the parties directly involved or  
 10 if the amicus has "unique information or perspective that can help the court beyond  
 11 the help that the lawyers for the parties are able to provide." *Sonoma Falls*  
 12 *Developers, LLC v. Nevada Gold & Casinos, Inc.*, 272 F. Supp. 2d 919, 925 (N.D.  
 13 Cal. 2003) (internal quotation marks and citation omitted).

14 The POB Creditors should be granted leave to file their brief *amici curiae*  
 15 because the resolution of the complex legal issues involved in this case will have  
 16 "potential ramifications beyond the parties" to the adversary proceeding. First, the  
 17 resolution of the legal issues raised by this appeal will have a direct bearing on San  
 18 Bernardino's main bankruptcy case and all of the City's creditors. It could also be  
 19 critical to the City's continuing ability to operate and successfully adjust its debts.  
 20 For example, CalPERS filed a Motion for Relief from Stay [Dkt. 227] in the main  
 21 bankruptcy case urging, as do the Appellants here, that it was not bound by the  
 22 automatic stay, seeking to require the City's payment of millions of dollars on  
 23 account of its pre-petition claim. The POB Creditors opposed CalPERS' motion.  
 24 [Dkt. 257]. Even though the Bankruptcy Court denied CalPERS' motion, it did so  
 25 without prejudice, [Dkt. 299], leaving open the possibility that the motion may be  
 26 renewed and the issues implicated in this appeal may arise again in the main  
 27 bankruptcy case. Leave to file the brief *amici curiae* should be granted because of  
 28 the material impact these complex issues will have on the City's ability to emerge

1 from bankruptcy and, consequently, the rights of its creditors, including the POB  
2 Creditors.

3 Second, the sovereign immunity and federalism issues raised by the appeal  
4 have broad implications beyond the City's bankruptcy proceedings. This Court's  
5 decision will likely impact all current and future municipal bankruptcies, and the  
6 POB Creditors have or will likely have creditor exposure in those proceedings. For  
7 example, Ambac, EEPK, and Wells Fargo have a tremendous stake in the resolution  
8 of these issues as they are, respectively, a bond insurer, bondholder, and indenture  
9 trustee with respect to countless municipal obligations in California as well as  
10 elsewhere in the United States. As the California Public Employees' Retirement  
11 System ("CalPERS") correctly observed in its motion for leave to file a brief  
12 *amicus curiae*, "the effect of this Court's ruling is not limited to the City of San  
13 Bernardino."<sup>2</sup> See [Dkt. 12] at 4. Nor is the impact limited to the State of  
14 California. Ambac, EEPK, and Wells Fargo have or represent significant municipal  
15 creditor interests nationwide and, therefore, present a unique perspective that will  
16 assist the Court in resolving the appeal. Having dealt with other financially  
17 distressed municipalities, the POB Creditors are keenly aware of the importance of  
18 the protection from creditor remedies that bankruptcy offers. For the reasons  
19 detailed in the POB Creditors' proposed brief *amici curiae*, unless the notion that  
20 states are exempt from the strictures of the Bankruptcy Code is rejected, no chapter  
21 9 debtor will be able to avail itself fully of the "breathing spell" from creditors that  
22 is afforded by a bankruptcy filing, and that provides the debtor with an opportunity  
23 to negotiate a plan of adjustment. Because of the broad impact the outcome of this  
24 appeal could have on current and future cases in which the POB Creditors have a  
25 significant interest, leave to file the *amici* brief should be granted.

26 Third, and separately from the legal issues involved, the POB Creditors will

27 <sup>2</sup> This Court permitted CalPERS to file a brief *amicus curiae* by order dated  
28 November 5, 2013 [Dkt. 13]. The Bankruptcy Court similarly granted leave to both  
the POB Creditors and CalPERS to file briefs *amici curiae* in the proceedings in the  
court below.

1 be materially affected by the practical outcome of the appeal. If the Appellants are  
 2 permitted to withhold \$15 million in taxes from the City, the City's continuing  
 3 ability to operate and rehabilitate under chapter 9 will be threatened if not outright  
 4 defeated. Leave to file the brief *amici curiae* is warranted for this reason as well.

5 For the foregoing reasons, the POB Creditors request that this Court grant the  
 6 POB Creditors leave to file the accompanying brief in support of the Appellee.

7 The undersigned party's counsel certifies that no other party's counsel  
 8 authored the attached *amicus curiae* brief in whole or in part, no other party or  
 9 party's counsel contributed money intended to fund this brief, and no other person  
 10 contributed money that was intended to fund the preparation or submission of this  
 11 brief. *See* Fed. R. App. P. 29(c)(5)(A)-(C).

12  
 13 Dated: November 14, 2013

Respectfully submitted,

14  
 15 **ARENT FOX LLP**

16 By: /s/ M. Douglas Flahaut

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